

**BEFORE THE STATE BOARD OF REGISTRATION
FOR THE HEALING ARTS**

STATE BOARD OF REGISTRATION
FOR THE HEALING ARTS,

Board,

v.

SCOTT R. SWOPE, D.O.
810 West Central Avenue
Springboro, Ohio 45066

Licensee.

HA01017816

SETTLEMENT AGREEMENT

Scott R. Swope, D.O., ("Licensee") and the State Board of Registration for the Healing Arts (the "Board") enter into this Agreement for the purpose of resolving the question of whether Dr. Swope's license as a physician or surgeon will be subject to discipline. Licensee and the Board jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to §621.045, RSMo Supp. 1997.

1. Licensee acknowledges that he understands the various rights and privileges afforded by law, including the right to a hearing of the charges against Licensee; the right to appear and be represented by legal counsel; the right to have all charges against Licensee proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against Licensee; the right to present evidence on Licensee's own behalf; the right to a decision based upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against

Licensee; and subsequently, the right to a disciplinary hearing before the Board at which time evidence may be presented in mitigation of discipline. Having been advised of these rights provided Licensee by operation of law; Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this Agreement and agrees to abide by the terms of this document as they pertain to Licensee.

2. Licensee acknowledges that he may, at the time this Agreement is effective or within fifteen days thereafter, submit this Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for discipline of Licensee's license.

3. Licensee acknowledges that he has been informed of his right to consult legal counsel in this matter.

4. Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claims, actions, causes of action, fees, costs, and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo 1994, or any claim arising under 42 U.S.C. 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case or this Agreement, or from the negotiation or execution of this Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Agreement in that it survives in perpetuity even in the event that any court of law deems this Agreement, or any portion thereof, void or unenforceable.

5. The parties stipulate and agree that the order agreed to by the Board and Licensee in Part II herein is based only on the Agreement set out in Part I herein. Licensee understands that the Board may take disciplinary action against Licensee based on facts or conduct not specifically mentioned in this document that are either now known to the Board or may be discovered.

6. Licensee understands and agrees that the Missouri State Board of Registration for the Healing Arts will maintain this Agreement as an open record of the Board as required by Chapters 334, 610, 620, and 621, RSMo, as amended.

I.

Based upon the foregoing, Board and Licensee herein jointly stipulate to the following:

JOINT PROPOSED FINDINGS OF FACT

1. The State Board of Registration for the Healing Arts (the "Board") is an agency of the State of Missouri created and established pursuant to §334.120, for the purpose of executing and enforcing the provisions of Chapter 334, RSMo.

2. Scott R. Swope, D.O., is licensed by the Board as a physician and surgeon, license number DO28824, which was first issued on July 7, 1962. Licensee's certificate of registration is current, and was current and active at all times mentioned herein.

3. Swope also holds a license to practice osteopathic medicine in Ohio.

4. On or about July 1, 1999, Swope entered into a consent agreement with the State Medical Board of Ohio. A copy of the factual and legal allegations and the consent

agreement are attached as Exhibit 1 and incorporated by reference as though fully set forth.

5. Among the allegations which served as the basis for the consent agreement was Swope's care and treatment of seventeen patients for weight loss with controlled substance anorectics without first determining if the patients could lose weight based on a regiment of caloric reduction, nutritional counseling, behavior modification and exercise.

6. Based on these factual and legal allegations, Swope entered into the consent agreement with the State Medical Board of Ohio in which his license to practice medicine in Ohio was revoked, the revocation was stayed and Swope's license was indefinitely suspended, but not for a period of less than six months and upon meeting the conditions for reinstatement, his license was to be placed on probation for three years.

JOINT PROPOSED CONCLUSIONS OF LAW

7. Cause exists to discipline Licensee's license pursuant to §334.100.2(8) RSMo Supp. 1997, which provides in pertinent part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * * *

(8) Revocation, suspension, restriction, modification, limitation, reprimand, warning, censure, probation or other final disciplinary action against the holder of or applicant for a license

or other right to practice any profession regulated by this chapter by another state, territory, federal agency or country, whether or not voluntarily agreed to by the licensee or applicant, including, but not limited to, the denial of licensure, surrender of the license, allowing the license to expire or lapse, or discontinuing or limiting the practice of medicine while subject to an investigation or while actually under investigation by any licensing authority, medical facility, branch of the armed forces of the United States of America, insurance company, court, agency of the state or federal government, or employers;

* * *

9. Licensee's conduct, as established by the foregoing facts, falls within the intendment of §334.100.2(8), RSMo Supp. 1997.

10. Cause exists for the Board to take disciplinary action against Licensee's license under §334.100.2(8), RSMo Supp. 1997.

II.

JOINT AGREED ORDER

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the order entered by the State Board of Registration for the Healing Arts in this matter under the authority of §621.110, RSMo 1994. This agreement will be effective immediately on the date entered and finalized by the Board.

A. Effective the date the Board enters into the Agreement:

1. The medical license, No. DO28824, issued to Licensee is hereby VOLUNTARILY SURRENDERED in lieu of disciplinary action. Licensee understands that this Agreement will be reported to the National Practitioner's Databank and the

Federation of State Medical Boards as an action in lieu of discipline.


2. Within 10 days of the effective date of this Agreement, Licensee shall return all indicia of Missouri medical licensure to the Board, including but not limited to, his wall-hanging license and pocket card.


B. Licensee hereby waives and releases the Board, its members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to §536.087, RSMo, or any claim arising under 42 USC §1983, which may be based upon, arise out of, or relate to any of the matters raised in this agreement, of from the negotiation or execution of this agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this agreement in that it survives in perpetuity even in the event that any court of law deems this agreement or any portion thereof void or unenforceable.

C. In consideration of the foregoing, the parties consent to the termination of any further proceedings based upon the facts set forth herein.

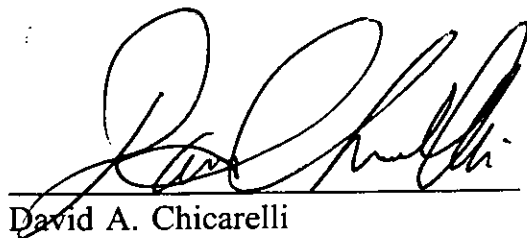
LICENSEE

BOARD

 5/30/00
Scott R. Swope, D.O. Date

 6/18/00
Tina Steinman Date
Executive Director

JEREMIAH W. (JAY) NIXON
Attorney General

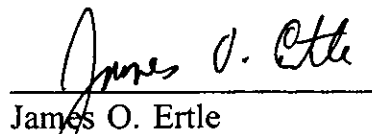


David A. Chicarelli
Attorney at Law
David A. Chicarelli Co., LPA

1200 E. Second Street, Suite C
Franklin, Ohio 45005

(513) 743-1500
(513) 743-1501 Facsimile

Attorney for Licensee

 6-5-00

James O. Ertle Date
Assistant Attorney General
Missouri Bar No. 49166

Broadway State Office Building
Post Office Box 899
Jefferson City, MO 65102
(573) 751-4087
(573) 751-5660 Facsimile

Attorneys for Board

EFFECTIVE THIS 8 DAY OF June, 2000.

**CONSENT AGREEMENT
BETWEEN
SCOTT RAY SWOPE, D.O.
AND
THE STATE MEDICAL BOARD OF OHIO**

This CONSENT AGREEMENT is entered into by and between SCOTT RAY SWOPE, D.O., and THE STATE MEDICAL BOARD OF OHIO (hereinafter BOARD), a state agency charged with enforcing Chapter 4731., Ohio Revised Code.

DOCTOR SWOPE voluntarily enters into this CONSENT AGREEMENT being fully informed of his rights under Chapter 119., Ohio Revised Code, including the right to representation by counsel and the right to a formal adjudicative hearing on the issues considered herein.

This CONSENT AGREEMENT contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this CONSENT AGREEMENT.

BASIS FOR ACTION

This CONSENT AGREEMENT is entered into on the basis of the following stipulations, admissions and understandings:

- A. The BOARD is empowered by Section 4731.22(B), Ohio Revised Code, to limit, revoke, suspend a certificate, refuse to register or reinstate an applicant, or reprimand or place on probation the holder of a certificate for any of the enumerated violations.
- B. The BOARD enters into this CONSENT AGREEMENT in lieu of further formal proceedings based upon the violations of Section 4731.22, Ohio Revised Code, set forth in the Notice of Opportunity for Hearing issued by the BOARD on February 10, 1999, attached hereto as Exhibit A and incorporated herein by this reference. The BOARD expressly reserves the right to institute additional formal proceedings based upon any other violations of Chapter 4731 of the Ohio Revised Code whether occurring before or after the effective date of this CONSENT AGREEMENT.
- C. DOCTOR SWOPE is licensed to practice osteopathic medicine and surgery in the State of Ohio.



SCOTT RAY SWOPE, D.O.

Consent Agreement

Page 5

probationary period under this CONSENT AGREEMENT.

Monitoring Physician

- F. Within thirty (30) days after the reinstatement of his certificate under section II of this CONSENT AGREEMENT, DOCTOR SWOPE shall submit for the BOARD's prior approval the name of a monitoring physician, who shall review DOCTOR SWOPE's patient charts and shall submit a written report of such review to the BOARD on a quarterly basis. Such chart review may be done on a random basis, with the frequency and number of charts reviewed to be determined by the BOARD. It shall be DOCTOR SWOPE's responsibility to ensure that the monitoring physician's quarterly reports are submitted to the BOARD on a timely basis.

Further, the monitoring physician shall otherwise monitor DOCTOR SWOPE and provide the BOARD with quarterly reports on the doctor's progress and status. DOCTOR SWOPE shall ensure that such reports are forwarded to the BOARD on a quarterly basis. In the event that the designated monitoring physician becomes unable or unwilling to serve in this capacity, DOCTOR SWOPE must immediately so notify the BOARD in writing, and make arrangements acceptable to the BOARD for another monitoring physician as soon as practicable. DOCTOR SWOPE shall further ensure that the previously designated monitoring physician also notifies the BOARD directly of the inability to continue to serve and the reasons therefore.

All monitoring physician reports required under this paragraph must be received in the BOARD's offices no later than the due date for DOCTOR SWOPE's quarterly declaration. It is DOCTOR SWOPE's responsibility to ensure that reports are timely submitted.

Weight Loss/Control Medications

- G. DOCTOR SWOPE shall not prescribe, dispense, or administer any prescription medications for weight loss or weight control.

SCOTT RAY SWOPE, D.O.

Consent Agreement

Page 6

Failure to comply

- H. DOCTOR SWOPE agrees that if any declaration or report required by this CONSENT AGREEMENT is not received in the BOARD's offices on or before its due date, DOCTOR SWOPE shall cease practicing beginning the day next following receipt from the BOARD of notice of non-receipt, either by writing, by telephone, or by personal contact until the declaration or report is received in the BOARD offices. Any practice during this time period shall be considered unlicensed practice in violation of Section 4731.43 of the Revised Code.

REQUIRED REPORTING BY LICENSEE

- IV. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR SWOPE shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he under contract to provide physician services or is receiving training; and the Chief of Staff at each hospital where he has privileges or appointments. Further, DOCTOR SWOPE shall provide a copy of this CONSENT AGREEMENT to all employers or entities with which he contracts to provide physician services, or applies for or receives training, and the Chief of Staff at each hospital where he applies for or obtains privileges or appointments.
- V. Within thirty (30) days of the effective date of this CONSENT AGREEMENT, DOCTOR SWOPE shall provide a copy of this CONSENT AGREEMENT by certified mail, return receipt requested, to the proper licensing authority of any state or jurisdiction in which he currently holds a license to practice. DOCTOR SWOPE further agrees to provide a copy of this CONSENT AGREEMENT by certified mail, return receipt requested, at time of application to the proper licensing authority of any state in which he applies for licensure or reinstatement of licensure. Further, DOCTOR SWOPE shall provide this BOARD with a copy of the return receipt as proof of notification within thirty (30) days of receiving that return receipt.

If, in the discretion of the Secretary and Supervising Member of the BOARD, DOCTOR SWOPE appears to have violated or breached any term or condition of this CONSENT AGREEMENT, the BOARD reserves the right to institute formal disciplinary proceedings for any and all possible violations or breaches, including but not limited to, alleged violations of the laws of Ohio occurring before the

SCOTT RAY SWOPE, D.O.

Consent Agreement

Page 7

effective date of this CONSENT AGREEMENT.

If the Secretary and Supervising Member of the BOARD determine that there is clear and convincing evidence that DOCTOR SWOPE has violated any term, condition or limitation of this CONSENT AGREEMENT, DOCTOR SWOPE agrees that the violation, as alleged, also constitutes clear and convincing evidence that his continued practice presents a danger of immediate and serious harm to the public for the purposes of initiating a summary suspension pursuant to Section 4731.22(G), Ohio Revised Code.

PERMANENT LIMITATION

Upon successful completion of probation, DOCTOR SWOPE's certificate will be restored, but shall thereafter be PERMANENTLY LIMITED AND RESTRICTED in that he will be PROHIBITED from prescribing, dispensing or administering any prescription medication for weight loss or weight control.

ACKNOWLEDGMENTS LIABILITY RELEASE

DOCTOR SWOPE acknowledges that he has had an opportunity to ask questions concerning the terms of this CONSENT AGREEMENT and that all questions asked have been answered in a satisfactory manner.

Any action initiated by the BOARD based on alleged violations of this CONSENT AGREEMENT shall comply with the Administrative Procedure Act, Chapter 119., Ohio Revised Code.

DOCTOR SWOPE hereby releases the BOARD, its members, employees, agents, officers and representatives jointly and severally from any and all liability arising from the within matter.

This CONSENT AGREEMENT shall be considered a public record as that term is used in Section 149.43, Ohio Revised Code. Further, this information may be reported to appropriate organizations, data banks and governmental bodies.

EFFECTIVE DATE

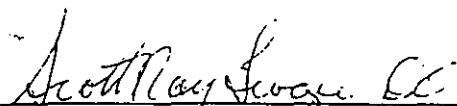
It is expressly understood that this CONSENT AGREEMENT is subject to ratification by the BOARD prior to signature by the Secretary and Supervising

SCOTT RAY SWOPE, D.O.


Consent Agreement

Page 8

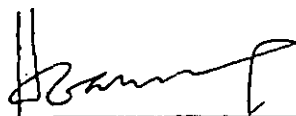
Member and shall become effective on July 1, 1999, or the last date of signature below, whichever is later.


SCOTT RAY SWOPE, D.O.


5/14/99
DATE


DAVID A. CHICARELLI, Esq.
Attorney for SCOTT RAY SWOPE, D.O.

5-14-99
DATE


ANAND G. GARG, M.D.
Secretary

6/10/99
DATE


RAYMOND J. ALBERT
Supervising Member

6/10/99
DATE


JAMES M. McGOVERN
Assistant Attorney General

6/10/99
DATE



State Medical Board of Ohio

77 S. High Street, 17th floor • Columbus, Ohio 43260-0315 • 614/466-3934 • Website: www.state.oh.us/meb/

February 10, 1999

Scott Ray Swope, D.O.
810 West Central Avenue
Springboro, OH 45066

Dear Doctor Swope:

In accordance with Chapter 119., Ohio Revised Code, you are hereby notified that the State Medical Board of Ohio intends to determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery, or to reprimand or place you on probation for one or more of the following reasons:

- (1) In the routine course of your practice, you undertook the care of Patients 1 - 17 (as identified on the attached Patient Key - Key confidential and not subject to public disclosure) with controlled substance anorectics for weight loss.
 - (a) Prior to initiating treatment of Patients 1 - 17 with controlled substance anorectics, you failed to determine and/or your records fail to reflect that you determined the patients had made a substantial good faith effort to lose weight in a treatment program utilizing a regimen of weight reduction based on caloric restriction, nutritional counseling, behavior modification, and exercise, without the use of controlled substances, and that said treatment had been ineffective.
 - (b) Further, prior to initiating treatment of Patients 1 - 17 with controlled substance anorectics, you failed to obtain and/or your records fail to reflect that you obtained a thorough history, and further you failed to perform and/or your records fail to reflect that you performed a thorough physical examination.
 - (c) Further, you failed to determine and/or your records fail to reflect whether Patients 5, 8, 12 and 16 lost weight over a fourteen day period; in fact, you failed to reflect in your records any weight measurement on one or more occasions.
 - (d) Further, you failed to discontinue dispensing controlled substance anorectics to Patients 1, 3 - 5, 7 - 9, 11 - 14, 16 and 17 when you determined that these patients had failed to lose weight over a fourteen day period.

EXHIBIT

mailed 2/11/99

Scott Ray Swope, D.O.

Page 2

Your acts, conduct, and/or omissions as alleged in paragraph (1) above, individually and/or collectively, constitute "violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board," as that clause is used in Section 4731.22(B)(20), Ohio Revised Code, to wit: 4731-11-04(B)(1), (2), and (5), Ohio Administrative Code (as in effect prior to October 31, 1998). Pursuant to Rule 4731-11-04(C), Ohio Administrative Code, violation of Rule 4731-11-04, Ohio Administrative Code, also violates Sections 4731.22(B)(2), (3) and (6), Ohio Revised Code.

Pursuant to Chapter 119., Ohio Revised Code, you are hereby advised that you are entitled to a hearing in this matter. If you wish to request such hearing, the request must be made in writing and must be received in the offices of the State Medical Board within thirty (30) days of the time of mailing of this notice.

You are further advised that you are entitled to appear at such hearing in person, or by your attorney, or by such other representative as is permitted to practice before this agency, or you may present your position, arguments, or contentions in writing, and that at the hearing you may present evidence and examine witnesses appearing for or against you.

In the event that there is no request for such hearing received within thirty (30) days of the time of mailing of this notice, the State Medical Board may, in your absence and upon consideration of this matter, determine whether or not to limit, revoke, suspend, refuse to register or reinstate your certificate to practice osteopathic medicine and surgery or to reprimand or place you on probation.

Copies of the applicable sections are enclosed for your information.

Very truly yours,



Anand G. Garg, M.D.

Secretary

AGG/bjs
Enclosures

CERTIFIED MAIL #Z 395 591 058
RETURN RECEIPT REQUESTED

cc: David A. Chicarelli, Esq.
CERTIFIED MAIL #Z 395 591 080
RETURN RECEIPT REQUESTED